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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1383.

THE UNITED STATES, APPELLANT,

vs.

THOMAS P. BASHAW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 22, 1891.

SUPREME COURT OF THE UNITED STATES.

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No. 1383.

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INDEX.

	Original.	Print.
Citation	A	1
Petition filed	1	1
Affidavit of service	1	1
Amended petition	2	2
Exhibit A, copy of account	9	5
Exhibit B, copy of account	15	8
Exhibit C, copy of account	18	10
Exhibit D, copy of account	19	10
Answer to amended petition	21	11
Reply	23	12
Stipulation as to amount to be recovered	23	12
Evidence	25	13
Testimony of Thomas P. Bashaw	26	13
Exhibit E, letter from Attorney-General, December 20, 1889	38	20
Exhibit 1, letter from Acting Solicitor of the Treasury to Thomas P. Bashaw, November 25, 1887	41	22
Exhibit 2, letter from F. M. Cockrell to Thomas P. Bashaw, March 30, 1889	42	22
Exhibit 3, letter from Attorney-General to F. M. Cockrell, March 29, 1889	42	22
Exhibit 4, letter from Deputy Comptroller of the Currency to F. M. Cockrell, March 25, 1889	43	23
Exhibit 5, letter from Attorney-General to Thomas P. Bashaw, October 21, 1890	45	24
Exhibit 6, letter from I. H. Maynard, Assistant Secretary of the Treasury to Thomas P. Bashaw, March 13, 1889	46	24

	Original.	Print.
Exhibit 7, letter from I. H. Maynard, Assistant Secretary of the Treasury, to Thomas P. Bashaw, March 18, 1889	47	25
Exhibit 8, letter from W. Windom, Secretary of the Treasury, to W. W. Dudley, May 26, 1890	48	26
Exhibit 9, letter from Lon V. Stephens, receiver, to Comptroller of the Currency, March 20, 1890	49	26
Judgment	50	27
Findings	52	27
Conclusions of law	54	28
Assignment of errors filed	56	29
Assignment of errors	56	29
Appeal allowed; citation signed	58	31
Clerk's certificate	59	31

A The United States of America to Thomas P. Bashaw, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal allowed by the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, wherein the United States is appellant, and you are respondent, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the honorable Amos M. Thayer, judge of the circuit court of the United States for the eastern district of Missouri, this tenth day of September, in the year of our Lord one thousand eight hundred and ninety-one.

AMOS M. THAYER,
United States District Judge
for the Eastern District of Missouri.

Service of within upon Thomas P. Bashaw, plaintiff, is hereby waived.
KNAPP & HARRIS,
Att'ys for Plaintiff.

SEPT. 12TH, 1891.

(Indorsed:) No. 3503. United States circuit court, eastern division of the eastern judicial district of Missouri. Thos. P. Bashaw vs. United States. Citation. Supreme Court. Filed 10th day of Sept., 1891. A. P. Selby, clerk.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States, in and for the eastern division of the eastern judicial district of Missouri.

Be it remembered, that on the 20th day of November, A. D. 1890, there was filed in the office of the clerk of said court a certain petition entitled Thomas P. Bashaw vs. The United States.

And on said twentieth day of November, 1890, there was filed in said cause an affidavit of service, in words and figures following, to wit:

Affidavit of service.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

Thomas M. Knapp, attorney for Thomas P. Bashaw, being duly sworn, on his oath states that he has this day filed in the clerk's office of the United States circuit court for the eastern division of the eastern judicial district of Missouri the petition in the case of Thomas P. Bashaw against the United States, being number 3503 upon the records of said court; that he has served a copy of the same upon George D. Reynolds, attorney of the United States for the eastern district of Missouri; and

that he has this day mailed, by registered letter, a copy of said petition to the Attorney-General of the United States.

THOMAS M. KNAPP.

Subscribed and sworn to before me this twentieth day of November, A. D. 1890.

2 [SEAL.]

A. P. SELBY,
Clerk of the United States Circuit Court,
Eastern Division, Eastern Judicial District of Mo.,
By GEO. F. HAID,
Deputy.

Registered letter No. 8614, P. O., Saint Louis, Mo. Received Nov. 20, 1890, of Thomas P. Bashaw, Fagan Building, a letter addressed to the Hon. Attorney-General, Washington, D. C. John B. Harlow, P. M.

And afterwards, to wit, on the thirteenth day of April, A. D. 1891, there was filed in said cause an amended petition, in words and figures following, to wit:

Amended petition.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In the circuit court of the United States for the eastern division of the eastern judicial district of Missouri.—September term, 1890.

THOMAS P. BASHAW, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 3503. Amended petition.

Plaintiff, by leave of court first had and obtained, files this, his amended petition herein.

Plaintiff states that his full name is Thomas P. Bashaw, and
3 that he resides in the city of St. Louis, in the State of Missouri, and that at the time the services hereinafter mentioned were rendered he was the duly appointed, commissioned, and qualified attorney of the United States for the eastern district of Missouri.

Plaintiff further states that on the 8th day of August, 1887, one William H. Bliss, then late United States district attorney for said district, instituted an action in this court for fees for services to the United States as district attorney, and that this plaintiff appeared in said suit as the attorney of the United States, and conducted and managed the defense to said action till the 27th day of March, 1885, when the same was finally disposed of, and final judgment therein rendered, whereby defendant became and was indebted unto this plaintiff in the sum of five hundred dollars.

That afterwards, to wit, on the 3rd day of April, 1889, this plaintiff duly made out and submitted his claim for charges, expenses, and fee for his said services in and about said suit, in said sum of five hundred dollars, to the judge of the district court for the eastern district of Missouri, and the same was duly certified by him, and afterwards, to wit, on the 8th day of April, 1889, plaintiff presented the same to defendant in its Department of Justice to the Attorney-General, but defendant, by its said department, wrongfully neglected and refused to pay the same, or certify

the same for payment, wherefore plaintiff prays for judgment against the defendant in the said sum of five hundred dollars, and for his costs of suit in this behalf expended.

And for another and further cause of action, plaintiff states that his full name is Thomas P. Bashaw, and that he resides in the city of St. Louis, in the State of Missouri, and that at the time the services hereinafter mentioned were rendered he was the duly appointed, commissioned, and qualified attorney of the United States for the eastern district of Missouri.

Plaintiff further states that on divers days, between and including the 28th day of January, 1887, and the 1st day of July, 1888, the collector of internal revenue for the first collection district of Missouri reported to this plaintiff, as district attorney, divers and sundry cases, an itemized account of which is hereto attached and marked Exhibit A, and made a part hereof, as cases in which fines, penalties, and forfeitures had been incurred, in the eastern district of Missouri, for alleged violations of the internal-revenue laws of the United States; whereupon plaintiff inquired into and examined such cases, and upon such inquiry and examination, he as such district attorney decided that proceedings therein could not probably be sustained, and that the ends of justice did not require that such proceedings should be instituted, and he thereupon made report of the facts in such cases to the Commissioner of Internal Revenue, for his direction; whereupon defendant became and was indebted unto plaintiff for his expenses incurred and services rendered in said cases in the sum of five dollars for each case, to wit, in the sum of eight hundred and twenty-five dollars.

That afterwards, to wit, on the 2nd day of March, 1889, this plaintiff duly made out and submitted his claim for said expenses incurred and services rendered in said cases, in said sum of eight hundred and twenty-five dollars, to the district judge of the said eastern district of Missouri, and the same was duly allowed and certified by him, and afterwards, to wit, on the day of 188 , this plaintiff duly presented said claim for payment to defendant in its Department of the Treasury to the accounting officers of the Treasury, but said defendant, by its said Department, wrongfully neglected and refused to pay the same.

Wherefore plaintiff prays judgment against the defendant, upon the facts and the law, in said sum of eight hundred and twenty-five dollars, and for his costs of suit in this behalf expended.

And for another and further cause of action plaintiff states that his full name is Thomas P. Bashaw, and that he resides in the city of St. Louis, in the State of Missouri, and that at the time the services hereinafter mentioned were rendered he was the duly appointed, commissioned, and qualified attorney of the United States for the eastern district of Missouri.

Plaintiff further states that on divers days, between and including the 1st day of July, 1888, and the 31st day of December, 1888, the collector of internal revenue of the first collection district of Missouri reported to this plaintiff, as district attorney, divers and sundry cases, an itemized account of which is hereto attached and marked Exhibit B, and made a part hereof, as cases in which fines, penalties, and forfeitures had been incurred in the eastern district of Missouri, for alleged violations of the

internal revenue laws of the United States; whereupon this plaintiff inquired into and examined said cases, and upon such inquiry and examination, he as such district attorney decided that proceedings therein could not probably be sustained, and that the ends of public justice did not require that such proceedings should be instituted, and he thereupon made report of the facts in such cases to the Commissioner of Internal Revenue for his direction; whereupon defendant became and was indebted unto plaintiff for his expenses incurred and services rendered in said cases in the sum of five dollars for each case, to wit, in the sum of two
6 hundred and thirty-five dollars; that afterwards, to wit, on the 9th day of March, 1889, this plaintiff duly made out and submitted his claim for said services rendered in said cases in the said sum of two hundred and thirty-five dollars to the district judge of said eastern district of Missouri, and the same was duly allowed and certified by him, and afterwards, to wit, on the day of , 188 , this plaintiff duly presented said claim for payment to defendant in its Department of the Treasury, to the accounting officers of the Treasury, whereupon said defendant, by its said Department, wrongfully neglected and refused to pay the same.

Wherefore plaintiff prays judgment against the defendant upon the facts and the law, and for his costs of suit in this behalf expended.

And for another and further cause of action plaintiff states that his full name is Thomas P. Bashaw, and that he resides in the city of St. Louis in the State of Missouri, and that at the time of the rendering of the services hereinafter mentioned he was the district attorney of the United States for the eastern district of Missouri, duly appointed, commissioned, and qualified.

Plaintiff further states that on the 31st day of August, 1888, charges were preferred against one Harry A. Schmidt, alleging that said Harry A. Schmidt had imported foreigners and aliens under contract to perform labor in the United States, in twelve several instances, and thereupon this plaintiff examined into the law and facts of each case, and of each of said alleged offenses, and incurred charges and expenses, and rendered services in and about the investigation thereof, on behalf of defendant, and did, on the 31st day of August, 1888, file petitions in twelve several cases, numbered 2970, 2971, 2972, 2973, 2974, 2975, 2976, 2977, 2978, 2979, 2980, and 2981, wherein the United States was plaintiff, and said
7 Harry A. Schmidt was defendant, returnable, respectively, to the September term of the circuit court of the United States, 1888, for the eastern district of Missouri, and did prosecute said cases in court; that, before said causes came on to be heard, plaintiff was removed from his said office of district attorney, pending an offer to compromise said causes made by defendant therein and entertained by the Secretary of the Treasury, and his further conduct of said cases thereby prevented. Plaintiff further states that after his said removal as district attorney said cases were further prosecuted by George D. Reynolds, esquire, the present district attorney, till the 19th day of April, 1890, when all further proceedings therein were discontinued and said causes were dismissed, by reason of and on account of the action of the Secretary of the Treasury of the United States in compromising said causes of action, thereby preventing the recovery of a judgment therein, and thereby depriving plaintiff of the fees which he would otherwise have earned.

Plaintiff further states that his services rendered in and about the cases aforesaid were reasonably worth the sum of three hundred dollars.

Afterwards, to wit, on the day of , 188 , this plaintiff duly made out and submitted to the judge of the district court of the eastern district of Missouri an account for said services, a copy of which is hereto attached, marked Exhibit C, and made a part hereof in the said sum of three hundred dollars, and obtained his certificate allowing the same, and afterwards, to wit, on the day of , 188 , this plaintiff presented said account to the accounting officers of the Treasury for payment, but defendant by its said officers wrongfully neglected and refused to pay the same.

8 Wherefore plaintiff prays judgment against the defendant, upon the facts and the law, in the said sum of three hundred dollars, and for his costs of suit in this behalf expended.

And for another and further cause of action plaintiff states that his full name is Thomas P. Bashaw, and that he resides in the city of St. Louis, Missouri, and that at the time of rendering the services hereinafter mentioned he was the duly appointed, commissioned, and qualified attorney of the United States for the eastern district of Missouri.

Plaintiff further states that on the 25th day of November, 1887, the defendant, by its Comptroller of the Currency, instructed this plaintiff to institute an action for the forfeiture of the charter of the Fifth National Bank of St. Louis, Missouri, and thereupon this plaintiff, in compliance with said instructions, instituted proceedings in the case of William L. Trenholm against the Fifth National Bank of St. Louis, Missouri, in the circuit court of the United States for the eastern district of Missouri, returnable to the March term of said court, 1888, for the purpose of forfeiting the charter of said bank, and conducted and managed the prosecution thereof till the 21st day of May, 1888, when final judgment was rendered therein, forfeiting said charter. Whereupon defendant became and was indebted unto plaintiff in the sum of one thousand dollars.

And afterwards, to wit, on the day of , 188 , plaintiff made out and submitted his accounts for said services to the judge of the district court of the eastern district of Missouri in the said sum of one thousand dollars, and the same was duly allowed by him and certified; and afterwards, to wit, on the day of , 188 , this plaintiff presented the said account to defendant in its Department of Justice,

9 to the Attorney-General for allowance and payment, but the defendant, wrongfully by its said Department, neglected and refused to pay the same.

Wherefore plaintiff prays judgment against the defendant in the said sum of one thousand dollars, upon the facts and the law, and for his cost of suit in this behalf expended.

STATE OF MISSOURI,
City of St. Louis, ss:

Thomas P. Bashaw, the above plaintiff, being duly sworn, upon his oath says that the facts stated in the foregoing amended petition are true.

THOMAS P. BASHAW.

Sworn to and subscribed before me this 13th day of April, 1891.

A. P. SELBY, *Clerk.*
By GEO. F. HAIL, *Deputy.*

Said Exhibit A above referred to is in words and figures following, to wit:

EXHIBIT A.

The United States to Thomas P. Bashaw, Dr.

For services rendered as attorney of the United States for the eastern district of Missouri in the inquiry and examination into the law and facts involved in the following cases reported by the collector of internal revenue of the first collection district of Missouri, to said attorney during a term commencing the 28th day of January, 1887, and ending the 30th day of June, 1888, in which fines, penelties, and forfeitures were incurred in the eastern district of Missouri for alleged violations of the internal revenue laws of the United States, in which said cases the said attorney decided upon such inquiry and examination that the ends of public justice did not require that proceedings for the enforcement of said fines, penalties, and forfeitures should be instituted, reported to Commissioner of Internal Revenue December 21, 1888:

	Name.	Date of offense.	Offense.
1.	J. H. Allen	May 1 to June 4, '88	D. M. T.
2.	Brown Station Co-op. A'n	Feb. 10 to Mar. 7, '88	"
3.	W. L. Bittner	Feb. 25 to March 9, '88	"
4.	Byrd and Tooloose	March 17 to Apr. 5, '88	"
5.	J. M. Boyd	June 1-8, '88	"
6.	Giles Boland	May to June 7, '87	"
7.	Brown Tobacco Co	June 10 to July 26, '87	D. L. T. H.
8.	E. C. H. Bell	July 1 to Aug. 3, '87	D. M. T.
9.	Berry and Gray	July 30 to Aug. 3, '87	"
10.	W. P. Boone	July 22 to Aug. 26, '87	M'n'f'r tob.
11.	Buschmann Bros	July 4 to Aug. 25, '87	D. M. T.
12.	M. L. Barker	Aug. 20 to Sep. 21, '87	R. L. D.
13.	Royal Bill	May 1 to Dec. 15, '87	"
14.	Blades and Oberfeldt	Nov. 1 to Dec. 13, '87	D. M. T.
15.	Herman Bronds	Oct. 29 to Nov. 5, '86	"
16.	J. A. Curry	Dec. 10-11, '87	Refilling empty cigar box.
17.	Jno. D. Crenshaw	Jan. 31 to Feb. 6, '88	D. M. T.
18.	Commins & Bates	Jan. 30 to Feb. 8, '88	"
19.	C. A. Croley	Jan. 24 to Feb. 20, '88	"
20.	J. E. Coleman	May 1 to June 5, '88	"
21.	Jno. Cooney	May 1 to June 2, '87	R. L. D. D. M. T.
22.	Byron H. Cody	July 26 to Aug. 3, '87	D. M. T.
23.	Jno. H. Cunningham	July 28 to Aug. 5, '87	D. M. T.
24.	Chadwick and Ferguson	July 30 to Aug. 6, '87	"
25.	Christ and Cochrane	Aug. 31 to Sep. 6, '87	"
26.	Mrs. L. A. Cain	May 1 to Nov. 29, '87	"
27.	Jno. Duffy	Jan. 1 to Feb. 7, '88	D. M. T. & R. L. D.
28.	Dixon and Griffith	Jan. 31, to Feb. 13, '88	D. M. T.
29.	W. F. Dockter	May 1 to July 26, '88	D. M. T. & R. L. D.
30.	De Lisle Bros. & Co	Dec., '87 to Jan'y, '88	D. M. T.
31.	T. V. Day	May 1 to June 2, '87	R. L. D. & D. M. T.
32.	Edgar Davis	Dec., '86, to Jan., '87	D. M. T.
33.	G. L. Gilberton	May 1 to June 1, '88	"
34.	Edwards & Morris	July 1 to Sep. 21, '87	"
35.	M. Fisher & Son	Feb. 21 to Mar. 17, '88	"
36.	Freudenstein Bros	Nov. 1 to Dec. 9, '86	"
37.	Catherine Fischer	Nov., '86, to Feb., '87	"
38.	Mary L. A. Fischer	May 1 to June 22, '87	"
39.	Edwin Ferguson	July 29 to Aug. 4, '87	"
40.	John F. M. Farner	July 25 to Aug. 4, '87	"
41.	The C. A. Ghio & Bros. W. L. Co	May, '87, to Jan., '88	Rectifier lqs.
42.	C. C. Gentry & Son	Feb. 29 to Mar. 9, '88	D. M. T.
43.	Mamie Guthrie	Apl. 1 to May 16, '88	"
44.	W. C. Green & Co	Feb. 29 to Mar. 9, '88	R. L. D. & D. M. T.
45.	Jos. Gray	Dec., '86, to Jan., '87	D. M. T.
46.	Gens & Feide	Mar. 15 to Ap'l 14, '87	"
47.	Margaret Gahn	May 1 to June 2, '87	R. L. D. & D. M. T.
48.	Gr't Western Weiss Beer B. Co	May 1 to June 4, '87	W. M. L. D.
49.	Hy. E. Green	May 1 to June 11, '87	D. M. T.
50.	Leo Gass	June 9 to July 9, '87	"
51.	George & Marshall	July 29 to Aug. 8, '87	"
52.	Garetson & Co	Feb. 14 to Mar. 3, '87	D. M. T.
53.	Hutchinson & Perkins	Mar. 20 to Apl. 6, '88	R. L. D. & D. M. T.

	Name.	Date of offense.	Offense.
54.	J. A. Hunter & Bro.	Mar. 28 to Apl. 7, '88	D. M. T.
55.	Chas. Huddleston	May 1 to June 15, '88	"
56.	Hannibal Tob. Co	May 1 to June 18, '88	M. T.
57.	Hiram N. Holliday	Dec., '86, Jan., '87	D. M. T.
58.	J. C. Howell	Nov. 28 to Dec. 7, '86	"
59.	Haffner & Froelich	May 1 to June 1, '87	"
60.	Virginia Hensley	May 1 to June 11, '87	"
61.	T. J. Hennessey	May 1 to June 11, '87	"
62.	Jno. R. Harrison	May 1 to June 17, '87	"
63.	S. H. Hill	June 6 to July 6, '87	"
64.	A. Hawkins	June 6 to July 6, '87	"
65.	Haberman & Soldan	May 1 to July 25, '87	Rectifier lqs.
66.	George Hartman	May 1 to May 18, '87	Manfr. cigars.
67.	Hulen, Hulett & Co	Nov. 1 to Dec. 9, '87	D. M. T.
68.	J. A. Hughey	Dec., '86, Jan., '87	R. L. D.
69.	Emma Jaeger	Mar. 29 to Apl. 5, '88	D. M. T.
70.	J. L. Jones	May 26 to June 6, '87	"
71.	Journeay & Bauman	Sep. 29 to Oct. 1, '87	R. L. D. & D. M. T.
72.	Jackson & Holmes	Nov. 25 to Dec. 5, '87	D. M. T.
73.	Otto Kohrs	Dec. '87, Jan. '88	"
74.	Keen & Collins	Feb. 24 to Mar. 26, '88	"
75.	Kerr & Ritter	May 25 to June 8, '88	R. L. D. & D. M. T.
76.	Mrs. A. B. Klink	May 1 to June 2, '88	D. M. T.
77.	Margaretha Kumpf	May 1 to June 5, '88	"
78.	George King	Apl. 29 to May 16, '87	R. L. D. & D. M. T.
79.	Mary Kramer	May 1 to June 2, '87	D. M. T.
80.	Henry Kueser	May 1 to June 20, '87	R. L. D. & D. M. T.
	81. Thomas Kelly	July 23 to Aug. 3, '87	" "
13	82. W. F. Kirkwood	Sep. 12 to Oct. 10, '87	D. M. T.
	83. F. Kippenberg	May 1, 82, Mar. 21, '87	R. D. M. L.
84.	R. E. Lagrone	Jan. 3 to Feb. 1, '87	D. M. T.
85.	B. F. Luckett	July 30 to Aug. 9, '87	"
86.	Thomas Lord	Aug. 30 to Sep. 7, '87	"
87.	Loide and Bro	Sep. 15 to Nov. 15, '87	"
88.	K. A. Laird	Nov. 7 to Dec. 12, '87	"
89.	Peter Meyers	January 1, 1888	R. L. D.
90.	D. E. Morris	Jan. 19 to Feb. 9, '88	D. M. T.
91.	Margaret McKibben	Feb. 6 to Mar. 7, '88	"
92.	Marshall & Pamplin	Jan. 17 to Apl. 18, '88	R. D. Oleo.
93.	R. N. & J. L. McFarland	May 31 to June 6, '88	D. M. T.
94.	E. Mayes	May 1 to June 14, '88	"
95.	Mrs. L. F. Medley	May 1 to Aug. 3, '88	"
96.	Meyer Bros. & Co	Apl. 1 to May 26, '87	Rect.—Lqs.
97.	Wolf G. Meyer	May 1 to June 1, '87	D. M. T.
98.	Jno. Molloy	May 1 to June 14, '87	"
99.	H. L. C. Meyers	May 1 to June 22, '87	"
100.	Gus Martin	June 23 to July 8, '87	"
101.	A. Muse	June 28 to July 7, '87	D. M. T.
102.	Geo. P. Mullhall	July 7 to Aug. 5, '87	R. L. D. & D. M. T.
103.	Mo. Lumber & Mining Co	July 20 to Aug. 31, '87	D. M. T.
104.	L. Margreiter	Sep. 30 to Oct. 17, '87	"
105.	Meilter Drug Co	Jan. 15 to Mar. 10, '87	W. L. D.
106.	Jno. McEachirn	May 1 to June 22, '87	R. L. D. & D. M. T.
107.	F. M. North	May 1 to Feb. 1 '88	D. M. T.
108.	Chas. Nitzen	July 21 to Aug. 1, '87	"
109.	Ellen Nolan	May 1 to Sep. 24, '87	R. L. D. & D. M. T.
110.	Newton & Childers	Oct. 14 to Nov. 16, '87	D. M. T.
	111. Jno. S. Nowack	Nov. 12 to Dec. 30, '87	R. L. D. & D. M. T.
14	112. Ordelheide & Stracke	Jan. 28 to Feb. 24, '88	D. M. T.
	113. Mrs. Jno. O'Neill	Jan. 1 to Mar. 17, '88	R. L. D. & D. M. T.
114.	Kate O'Laughlin	May 1 to June 4, '88	D. M. T.
115.	A. Pabst	January 1, 1888	R. L. D.
116.	Sam'l M. Porter	Mar. 31 to Apl. 2, '87	D. M. T.
117.	Price & Lucky	Mar. 21 to Apl. 9, '87	"
118.	S. S. Patton	July 1 to Aug. 5, '87	"
119.	F. M. Purcell	May 1, '86, Sep. 15, '87	R. L. D.
120.	J. M. Proctor & Co	May 1 to Sep 20, '87	D. M. T.
121.	E. C. Patrick	Nov. 23 to Dec. 12, '87	"
122.	Piper, Drury & Co	Nov. 21 to Dec. 13, '87	"
123.	" " "	" "	"
124.	David C. Pollock	Jan. 1 to Feb. 10, '87	R. L. D.
125.	J. C. Raible	Mar. 29 to Apl. 14, '88	R. D. Oleo.
126.	Richmond & Uht	Mar. 23 to Apl. 21, '88	D. M. T.
127.	Christ Rollin	May 1 to June 1, '88	R. L. D. & D. M. T.
128.	Robertson & Smith	May 1 to June 6, '88	D. M. T.
129.	C. S. Rannells	May 1 to June 15, '87	"
130.	T. B. Ragland	July 30 to Aug. 6, '87	D. M. T.
131.	Peter J. Reid	Aug. 31 to Sep 6, '87	"
132.	C. M. Robertson	Aug. 22 to Sep 7, '87	R. L. D. & D. M. T.
133.	Hermann Rennekamp	October 7, 1887	Oleo.
134.	W. P. Rule	Nov. 17 to Dec. 13, '87	D. M. T.
135.	Geo. Schachner & Son	Dec., '87, Jan., '88	R. L. D. & D. M. T.
136.	Seitz Merchandise Co	May 1, '87, Apl. 1, '88	W. M. L. D.
137.	Scheel & Crusins	Mar. 16 to Apl. 4, '88	R. L. D. & D. M. T.

	Name.	Date of offense.	Offense.
138.	L. M. Smith	Mar. 5 to Apl. 5, '88	D. M. T.
139.	S. St. Louis Gymnastic Sy	May 1 to Mar. 21, '87	R. L. D. & D. M. T.
140.	J. H. Stuessel	June, '86, Apl., '87	R. L. D.
141.	Mrs. M. Scherer	Mch. 17 to Apl. 7, '87	D. M. T.
15 142.	William Schneider	May 1 to June 1, '87	R. L. D. & D. M. T.
143.	Henry S'Renco	May 1 to June 2, '87	Cigar manfr.
144.	Stephens & Smith	Aug. 13 to Sep. 6, '87	D. M. T.
145.	Thorn & Andrews	Jan. 11 to Feb. 15, '88	"
146.	Vincent Treanx	May 30 to June 15, '87	"
147.	Wm. P. Tuttle	Nov. 28 to Dec. 8, '87	"
148.	Fritz Utz	Sep. 28 to Oct. 3, '87	R. L. D. & D. M. T.
149.	W. Frank Van Dyke	Dec. '87, Jan. '88	D. M. T.
150.	Elizabeth Vollmar	May 1 to Feb. 3, '87	"
151.	Henry G. Vasel	May 1 to June 1, '87	R. L. D. & D. M. T.
152.	Henry C. Withers	Jan. 31 to Feb. 4, '88	D. M. T.
153.	August Wesseling	Feb. 1 to Apl. 30, '88	"
154.	HenryW. Wulze	May 1 to June 1, '88	R. L. D & D. M. T.
155.	Mary Welge	May 1 to June 12, '88	D. M. T.
156.	Wood Bros	Mar. 20 to Apl. 7, 87	"
157.	Mrs. Christ Weber	May 1 to June 2, 87	R. L. D. & D. M. T.
158.	Dan'l E. Whelan	May 1 to June 2, 87	R. L. D. & D. M. T.
159.	R. C. Wettig	May 1 to June 1, '87	D. M. T.
160.	J. P. Walden	May 1 to June 3, '87	"
161.	Robert H. West	June 27 to July 9, '87	"
162.	E. L. Williams	June 27 to July 11, '87	"
163	Mrs. Sophia Wiedensohler	Jan. 28 to Feb. 4, '87	R. L. D. & D. M. T.
164.	W. T. How	Feb. 20 to Mar. 2, '87	D. M. T.
165.	Alex Prior	Jan. 1 to Feb. 25, '88	D. L. T.

Total, 165 cases, at $5.00 each, $825.00.

Said Exhibit "B" above referred to is in words and figures following, to wit:

EXHIBIT "B."

16 The United States, to Thomas P. Bashaw, Dr.

For services rendered as attorney of the United States for the eastern district of Missouri, in the inquiry and examination into the law and facts involved in the following cases reported by the Collector of Internal Revenue of the first collection district of Missouri, to said attorney during a term commencing on the 1st day of July, 1888, and ending on the 31st day of December, 1888, in which fines, penalties and forfeitures were incurred in the eastern district of Missouri, for alleged violations of the internal revenue laws of the United States, in which said cases the said attorney decided, upon such inquiry and examination, that the ends of public justice did not require that proceedings for the enforcement of said fines, penalties, and forfeitures should be instituted: reported to Commissioner of Internal Revenue, February 1, 1889.

	Name.	Offense.	Date.
	W. A. Anthony	D. M. T	Oct. 1 to Nov. 28, '88.
	T. G. Barnhill	"	July 1 to Aug. 9, '88.
	J. B. Boone	R. L. D. & D. M. T	May 1 to July 23, '88.
	Burker and Jaeger	D. M. T	Nov. 1 to Dec. 10, '88.
	L. Curtis	R. L. D	Nov. 20 to Dec. 13, '88.
	Cole and Williams	D. M. T	Oct. 10 to Dec. 13, '88.
	Dwyer and Bray	R. L. D. & D. M. T	May 1 to July 2, '88.
	John Donahue	" "	Sep. 28 to Oct. 2, '88.
	H. H. & L. Daugherty	R. L. D	May 1 to June 10, '88.
	C. A. Daust & Co	D. M. T	Nov. 1 to Dec. 12, '88.
	Green Fasley	"	Nov. 9 to Dec. 5, '87.
	Chas. Edwards	"	Nov. 1 to Dec. 1, '88.
	Flynn and Walsh	R. L. D. & D. M. T	Aug. 1 to Sep. 15, '88.
17	L. B. & M. O. Frayser	D. M. T	Sep. 20 to Oct. 11, '88.
	Josephine Goldschmidt	"	May 1 to June 22, '88.

Name.	Offense.	Date.
J. O. Gisborn	D. M. T	Aug. 30 to Sep. 6, '87.
John T. Gillilan	"	Oct. 24 to Nov. 22, '88.
May Gardner	R. L. D	Dec. 15, '86 to Jan. 7, '87.
C. T. Holbrock	D. M. T	Nov. 1 to Dec. 2, '86.
Happe and Bower	R. L. D. & D. M. T	Nov. 23 to Dec. 7, '87.
M. M. Jodd	" "	May 1 to June 26, '88.
Kalb Drug Co	R. L. D	May 1 to July 3, '88.
Mrs. Minnie Kirsch	D. M. T	May 1 to July 24, '88.
Jno. W. Luster	D. M. T	Sep. 26 to Oct. 10, '88.
S. G. A. Medley	"	Dec. 15, '87 to Jan. 6, '88.
Mrs. M. Maguire	"	May 1 to July 23, '88.
Andrew Murphy	R. L. D. & D. M. T	Sep. 1 to Nov. 3, '88.
Chittick Mortland	D. M. T	Sep. 28 to Oct. 24, '88.
C. A. McDonald	D. M. T	Sep. 22 to Oct. 7, '87.
McSpadden and Headlee	"	Sep. 29 to Oct. 9, '88.
Theo. G. McCune	"	Nov. 29 to Dec. 23, '88.
John Prior	R. L. D. & D. M. T	Sep. 29 to Oct. 1, '88.
Mary Ryan	D. M. T	May 1 to July 7, '88.
Johanna Rau	"	May 1 to June 27, '88.
Henry Roemer	"	July 16 to Aug. 3, '88.
T. H. Ryan	"	May 1 to July 31, '88.
Scharff Bros	W. L. D. & D. M. T	May 1 to July 5, '88.
Strother and Clayton	D. M. T	May 30 to June 8, '88.
Smith and Lingenfelter	"	June 29 to July 9, '88.
C. G. Stifel Brewing Co	W. M. L. D	May 1 to Aug. 25, '88.
J. M. Shore	D. M. T	Aug. 1 to Sep. 12, '88.
Nicholas Stern	Manf. cigars	Nov. 1 to Aug. 22, '88.
18 John Taylor, jr	D. M. T	Nov. 1 to Dec. 1, '86.
D. G. Tutt Grocery Co	W. D. M. L	May 1 to Nov. 7, '87.
C. P. Wilson	R. L. D	Aug. 1 to Sep. 22, '88.
Kate Wetzel	R. L. D. & D. M. T	July 29 to Aug. 16, '88.
A. F. Wellmeyer	D. M. T	Aug. 21 to Sep. 26, '88.

Total 47 cases, at $5.00 each, $235.00.

Said Exhibit "C," above referred to, is in words and figures following, to wit:

EXHIBIT "C."

The United States in account with Thomas P. Bashaw, Dr.

To professional services performed for the United States while and as United States district attorney for the eastern district of Missouri in the United States circuit court for the eastern division of said district, at St. Louis, on divers days, between the 1st day of July, 1888, until the 27th day of May, 1889, in twelve several cases in which the United States was plaintiff and Harry A. Schmidt was defendant, being causes numbered 2970 and 2981, both included, on the docket of said court, said services consisting of an examination of the law and the facts, conferences with the parties preferring the charges, correspondence with the United States consul at Hamburg, Germany, interviews with and particular examination of the persons imported, and of the correspondence had between them and the defendant preparing, drawing, and filing the declaration in each of said causes and the collection of the evidence, and preparation for trial, and looking after the cases in court, at $25 in each case, $300.

19 Said Exhibit D, above referred to, is in words and figures following, to wit:

EXHIBIT D.

The United States, in account with Thomas P. Bashaw, Dr.

To services rendered at the direction of the Attorney-General as attorney for the United States in the case of Wm. H. Bliss against the United

States, in the United States circuit court for the eastern district of Missouri, declaration in debt during the years 1887, 1888, and 1889; said services consisting of examination of law and facts, preparing, filing, arguing and submitting plea to the jurisdiction, preparing and filing answer to the amended petition; preparing and filing agreed statement of facts; arguing and submitting case, and consultations with plaintiff and plaintiff's attorneys; damages assessed for plaintiff at $2,500; and for defendant on set off at $2,429 $\frac{11}{100}$, and judgment for plaintiff for $70 $\frac{89}{100}$; arguing and submitting motion for new trial, $500.00.

The following are the docket entries in the case: Wm. H. Bliss vs. The United States, docket No. 2888: Petition filed August 8, 1887; plea to jurisdiction filed October 8, 1887; amended petition filed March 3, 1888; plea to jurisdiction submitted, with leave to plaintiff and defendant to file briefs March 19, 1888; plea to jurisdiction overruled April 13, 1888; answer to amended petition filed May 7, 1888; Cochran, Dickson and Smith enter their appearance as attorneys for plaintiff September 20, 1888; replication of plaintiff filed November 27, 1888; agreed statement of facts filed November 27, 1888; argued and submitted December 17, 1888; damages assessed for plaintiff on his cause of action at $2,500.00, and for defendant on set off at $2,429 and $\frac{11}{100}$ and judgment for plaintiff for $70 $\frac{89}{100}$ January 2, 1889; motion for a new trial filed by plaintiff January 5, 1889; motion for new trial argued and submitted January 30, 1889; judgment of January 2nd, 1889, set aside and ordered that cause stand submitted on evidence adduced in order that certain questions of law involved might be determined by a full bench, March 5th, 1889; cause argued and submitted before a full bench March 25th, 1889; damages assessed for plaintiff on his cause of action at $2,500.00, and for defendant on set off at $2,429 $\frac{11}{100}$, and judgment for plaintiff for $70 $\frac{89}{100}$ March 27th, 1889.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

Thomas P. Bashaw, United States attorney for the eastern district of Missouri, being duly sworn, on his oath deposes and says that the services charged for in the above account have been actually and necessarily performed, as therein stated.

THOMAS P. BASHAW,
United States Attorney for the Eastern District of Missouri.

Subscribed and sworn to before me this 3d day of April, 1889.
[SEAL.] A. P. SELBY, *Clerk.*

I certify that the charges made by the district attorney for the services rendered in this case is, in my opinion, reasonable.

AMOS M. THAYER,
District Judge.

21 And afterwards, to wit, on the seventeenth day of April, A. D. 1891, there was filed in said cause an answer to amended petition, in words and figures following, to wit:

Answer to amended petition.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In the circuit court of the United States for the eastern division of the eastern judicial district of Missouri. March term, 1891.

THOMAS P. BASHAW, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } Answer to amended petition.

Defendant, by Geo. D. Reynolds, its attorney, for answer to the first count of the amended petition of plaintiff herein, admits that plaintiff rendered the services for defendant as stated therein.

Defendant, for further answer to said first count, says, that by the statutes of the United States the plaintiff was entitled to a fee of ten dollars for said services, and no greater sum therefor, and that defendant has paid to plaintiff said sum of ten dollars for said services. Wherefore, as to said count or cause of action, it prays to be discharged with its costs.

22 And defendant, for answer to the second count of the said amended petition of plaintiff herein, denies each and every allegation therein contained.

And defendant, for answer to the third count of the said amended petition of plaintiff herein, denies each and every allegation therein contained.

And defendant, for answer to the fourth count of the said amended petition of plaintiff herein, denies each and every allegation therein contained.

And for answer to the fifth count in the amended petition of plaintiff herein, defendant, by said attorney, admits that plaintiff rendered the services as stated therein.

Defendant, for further answer to said fifth count in plaintiff's amended petition, says, that by the statutes of the United States, the plaintiff was entitled to a fee of ten dollars for said services, and no greater sum therefor, and that defendant has paid to the plaintiff said sum of ten dollars for said services; wherefore, as to said fifth count or cause of action, it prays to be discharged with its costs.

And, further answering, defendant says that for each of the years and parts of years included in the said amended petition the plaintiff received from the United States the maximum compensation authorized by law for his services as United States attorney, and that he is not entitled to receive any compensation from the United States for said years or any parts thereof included in said amended petition, and during which the said services were rendered over and above the amount already paid him by the United States.

GEO. D. REYNOLDS,
United States Attorney, Eastern District of Missouri.

23 And afterwards, to wit, on the eighth day of May, A. D. 1891, there was filed in said cause a reply, in words and figures following, to wit:

Reply.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri ss.:

In the United States circuit court in and for said division of said district.

THOMAS P. BASHAW, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 3503. Reply.

Now comes plaintiff and, for reply to defendant's answer to the first count in plaintiff's petition, denies each and every allegation of new matter in said answer to said first count contained.

And plaintiff, for reply to defendant's answer to the fifth count in plaintiff's petition, denies each and every allegation of new matter in said answer to said fifth count contained.

KNAPP & HARRIS,
Attorneys for Plaintiff.

And also on said eighth day of May, A. D. 1891, there was filed in said cause a certain stipulation, in words and figures following, to wit:

Stipulation.

24 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In the United States circuit court in and for said division of said district.

THOMAS P. BASHAW, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 3503. Stipulation.

It is hereby stipulated and agreed by and between the parties in the above cause, through their attorneys, that in the event judgment is rendered for plaintiff on any count of plaintiff's petition, and that by reason of said judgment the amount which plaintiff is entitled to receive from the defendant that should be reported to the Attorney-General, upon the semi-annual emolument returns of district attorneys, should be and become in excess of the amount which district attorneys are permitted to retain out of the fees of their office by law, then any excess may be retained by defendant and plaintiff will not be entitled to receive said excess.

GEO. D. REYNOLDS,
U. S. Atty.
KNAPP & HARRIS,
Attys. for Plaintiff.

25 UNITED STATES OF AMERICA,
Eastern division of the eastern judicial district of Missouri, ss:

In the circuit court of the United States, in and for said division and district.

THOMAS P. BASHAW, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT. } No. 3503.

Now on this 11th day of May, A. D. 1891, this cause coming on to be heard on the law and the evidence, come Thomas P. Bashaw, plaintiff herein, by Knapp & Harris, his attorneys, and the United States, defendant, represented by Geo. D. Reynolds, esq., district attorney for said district, and E. P. Johnson, esq., assistant district attorney, and the following testimony and evidence were given:

Mr. REYNOLDS. Your honor, Mr. Johnson will represent the Government in this case. I have a stenographer here, so that your honor will not need to make any notes unless you want.

Mr. KNAPP. In this case I believe your honor has passed on all the counts except the one in regard to the Schmidt cases.

The COURT. How is that?

Mr. KNAPP. I was going to read it to your honor. (He reads the count in the petition in which the plaintiff claims fees in twelve cases of the United States vs. H. A. Schmidt.) The other counts are the same as in the original petition. I believe your honor is familiar with them.

26 Mr. JOHNSON. I will read the answer to your honor. It is very short. (Mr. Johnson reads the answer to the amended petition.)

The COURT. What is the first count about?

Mr. KNAPP. It is the charge for services in the case of William H. Bliss vs. the United States, under the act of March 30th, 1887.

Mr. JOHNSON (after reading the answer). Now, your honor, we had a further allegation in the answer, which is as follows, but which we propose now to dismiss and to file a stipulation in place of it. I will just read it (he reads the portion referred to). Now, we dismiss that clause of our answer, and in lieu of it file the following stipulation (he reads the stipulation). So that we obviate the ———. It is already filed. Now, your honor, as a matter of form I wish to make an objection to receiving any evidence on any one of these counts, for the reason that each one of these counts fails to state any cause of action, and shows on the face of it that plaintiff is not entitled to recover. However, your honor has passed on all the accounts except that of the Schmidt cases. In that I think the objection is well taken. It does not state any cause of action, it simply says that plaintiff was removed and has not received any fee. On the same argument he would be entitled to fees in all cases pending then.

Mr. KNAPP. In reply to the answer to the first count plaintiff files this (he reads the replication to the first count and to the fifth count). Those counts being for services in the Bliss case and services in the matter of the forfeiture of the charter of the Fifth National Bank.

THOMAS P. BASHAW, the plaintiff, being sworn, testified in his own behalf as follows:

27 Examined by THOMAS M. KNAPP, Esq.:

Q. What is your name?

A. Thomas P. Bashaw.

Q. Where do you reside?

A. St. Louis, Missouri.

Q. Were you district attorney of the United States?

A. Yes, sir; of the eastern district of Missouri.

Q. When were you appointed?

A. I was appointed some time in January, 1887. I qualified on the 28th of January.

Q. How long did you remain as district attorney?

A. Until the 28th of May, 1889, I think.

Q. In August, 1887, you were district attorney?

A. Yes, sir.

Q. Was there a suit filed by William H. Bliss against the United States for services?

A. Yes, sir; there was.

Q. He had been district attorney before that?

A. Yes, sir.

Q. Did you appear in that suit as the attorney of the United States?

A. I did.

Q. Conducted the management of that case?

A. I did in connection with my assistants, and gave it a good deal of personal attention.

Q. Was that disposed of in March, 1889, or about that time?

A. I think it was that time, about.

Q. Did you present any account for services to the judge of the district court, judge?

A. Well, I made out an account against the Government and asked the court to certify to it that the fee charged was reasonable as to amount.

Q. You presented that account to the Department of Justice, the defendant?

A. Yes, sir.

Q. Was that ever paid?

A. No, sir.

Q. How much was allowed, or rather how much did you claim in that account?

A. I think it was $500.00; I have forgotten whether it was $500.00 or $600.00.

28 The COURT. You have the bill.

Mr. KNAPP. It was $500.00.

Q. Were the services in that case worth the sum of $500.00?

(Objected to on the theory that the law fixes the compensation in such cases.)

The COURT. I will have to determine both the law and the facts.

Mr. JOHNSON. I did that as a matter of form.

(Objection overruled.)

A. I think they were really worth $500.00. It was a case of some importance. The examination of the case rendered necessary the

examination of the records of the circuit court, and as I now remember a trip to Washington City, and examining the records there, to make preparations for the defense. I was directed by the Department of Justice to give that case special attention, as I now remember, and to keep the Department informed of every step I took in the case, and I did give it special attention, I and both of my assistants.

Q. Ever been paid anything for that?

A. I think not.

Q. You presented your account to the defendant?

A. Yes, sir; I sent it on, and when in Washington I had several talks with the officer of the Department of Justice who has charge of matters of that kind. The value of the services were never questioned. It was the reasonableness of the fee.

Q. Did you ever, between January, 1887, and July, 1888, when the collector reported to you, as district attorney, divers and sundry cases, ever examine those reports of cases in which fines, penalties, and forfeitures had been incurred?

A. Yes, sir; those were cases reported by the collector of internal revenue.

Q. Did you inquire into and examine those reports?

29 A. Yes, sir; they were reported by the collector of internal revenue, and under the statute I was required to examine into them, and I did so.

Q. State, as a general rule, in what way those examinations were conducted.

A. Well, it depended to some extent on the place of residence of the party charged. If he lived in this city we had a ——. Well, we had a circular letter we sent to the party whether he lived in or out of the city. But if he lived in the city he usually reported to the office, and we inquired into the facts by a personal examination, by asking the party questions and reporting the facts as he claimed them to be, and afterwards, if we deemed it necessary, by making inquiry as to the standing of the party, what kind of business he was in, what the probabilities were as to whether it was a mere oversight or inadvertency, or whether it was with any intention to evade or violate the law; in other words, to ascertain what the real facts were, and what was the degree of culpability in the defendant. If he lived outside of the city it was ascertained by correspondence. I kept a record of those proceedings.

Q. Those were cases in which you decided that proceedings could not properly be sustained, and that the ends of public justice did not require that they should be instituted, and therefore you reported them to the Commissioner of Internal Revenue not to be prosecuted?

A. Yes, sir; I reported all those cases to the Commissioner of Internal Revenue.

Q. What were your services worth in each one of these cases on an average?

A. Well, in some of them the services were worth a good deal of money In some of them it was necessary to spend money, and always to do more or less work. I made that account at first out at $10.00. I

30 thought that was a reasonable fee, because I understood the Government has paid that in that class of cases. I afterwards found

out it was only $5.00, so I made out an account at that rate. In some of the cases it was easy. The man would come down, and from conversation we could see there was no intentional violation; and again other circumstances prevented him, sometimes being a physical impossibility for him to have paid in time. I presented the account and payment was refused on the ground that the Government was not responsible unless cases were instituted under that section.

Mr. KNAPP (to Mr. Johnson). You consent that the testimony now given with reference to the second count shall apply to the third?

Mr. JOHNSON. Oh, yes.

WITNESS. The facts with reference to the third count are the same. The cases were reported at different times from those in the second count. That is the only difference.

Q. On the first of ———, 1888, were charges preferred against Harry A. Schmidt?

A. Yes, sir.

Mr. JOHNSON. Now, your honor, we shall make the additional objection that if there was any fee fixed in that case at all the statute fixed it.

The COURT. I will hear the testimony, subject to your objection.

A. Yes, sir. Charges were made, I think, by some organization in this city, by the Tailors' Union, I think. I examined those and incurred charges and expenses with regard to them.

Q. State in a general way what those services were.

A. Well, the charge, as I now remember it, was that Mr. Schmidt, through an agent of his in Hamburg, had made a contract with some parties to work for him as merchant tailor at certain prices. I had
31 a number of conferences with the parties making the charge and with the parties who were claimed to be brought here by Schmidt under this contract. I also had correspondence with the United States consul at Hamburg, and through him I ascertained what the facts would be from the testimony of this agent of Schmidt at Hamburg. I had conferences here with these imported men. They were all recently from Germany, and I do not think there was one with whom I could hold any sort of conversation without the aid of an interpreter, and after ascertaining what the facts were, and believing there was a good case against Schmidt, I instituted several actions, as it appeared to be my duty. And then these men had been discharged by Mr. Schmidt, and they had been scattered all over the United States. A few were still here. I, at one time, I think, had them all here and ready for trial. In the mean time Mr. Schmidt, through his attorneys, had submitted an offer of compromise, and it was being entertained by the Secretary of the Treasury, and the cases were laid over pending that investigation, and went over from time to time until I was removed from office. The cases, however, as I now remember, were at one time ready for trial as far as the Government was concerned.

Q. You were ready to try the cases when they were called?

A. They were never called for trial, because they knew this proposition was being entertained, and as a matter of fact they were never called for trial.

Q. What were your services in these cases worth?

A. Well, I made out the account for $300.00, $25.00 in each case. I think that is a reasonable fee. It was not questioned by the Department.

It was, as far as this country is concerned, a new law. I had no precedents to go by. As far as I could ascertain there was only one case filed
32 like that then, and that was a proceeding against a church in the East for importing a minister. I prepared that case with care and it took considerable labor and trouble to do it.

Q. You presented your account in that amount?

A. Yes, sir.

Q. Was it ever paid?

A. No, sir.

Q. Ever receive anything for your services?

A. No, sir.

Q. Did you in November, 1888, by direction of the Comptroller of the Currency, bring an action or institute an action for the forfeiture of the charter of the Fifth National Bank of Missouri?

A. Yes, sir.

Q. What was the style of the case?

A. William N. Trenholm vs. The Fifth National Bank.

Q. Did you prosecute that until the 21st of May, until final judgment was rendered therein?

A. Yes, sir.

Q. What were your services reasonably worth?

A. I think they are worth what is claimed in the account submitted to the Department. I sent that account, and no objection was made against that account, so far as I know.

(Objected to on the ground that the statute fixes the fee.)

The COURT. I will hear the evidence subject to your objection.

Q. Ever have any correspondence with regard to it?

A. Yes, sir; a good deal of correspondence in regard to it?

The COURT. I do not think that that correspondence is admissible. The statements of these officers would not be binding on the Government.

Q. Did you ever receive any part of that?

A. No, sir.

The COURT. Did they ever make any allowance for services in that case?

A. No, sir; I can not answer that, if your honor please, without referring to those communications.

33 Mr. JOHNSON. I have no objection to the judge referring to the papers to refresh his memory.

A. My understanding that it was allowed and that the only trouble that was in the way was an appropriation. I never received a cent on this account.

Mr. JOHNSON. Did you ever receive any that was allowed?

A. I never received a cent. The question asked by his honor was whether the account was allowed.

The COURT. That was the point they made; that there was no appropriation to pay it?

A. Yes, sir; they informed me in person, when I was in Washington City, that it had been forwarded to Congress for an appropriation. It was sent to the Senate, because the bill had passed the House; that it did not get to the Senate in time; and they wrote a letter to the same effect to

Senator Cockrell, who I had asked to look after it for me. I consider that it was allowed, although they never told me in so many words that it had been. The statement was, that it had been sent over to Congress for an appropriation.

The COURT. That is, they had referred it to Congress for appropriation?

Mr. KNAPP. It was approved by the Attorney-General; yes, sir.

Cross examination by E. P. JOHNSON:

Q. There was no formal allowance by the Department, but it was referred to Congress?

A. Mr. Johnson, you have the letter there of the Attorney-General to Senator Cockrell, which is almost word for word the statement made to me by the officer of the Department of Justice who has in charge that account, that it had been sent to the Senate for an appropriation, as
34 I stated a while ago. The officer did not say to me, in so many words, that the account had been allowed. He made no statement about allowance. I understood from what he said, as I did from that letter, that it had been, although he does not say so in so many words.

Q. You had no notice that any had been made?

A. Not unless you consider that one.

Q. I do not consider that an allowance of itself.

A. Then I have not, because this statement made by this gentleman, that attorney, Mr. Hodges, was to the same effect as the statements contained in that letter.

Q. And you have no knowledge of its allowance having been made in any department?

A. No, sir.

Q. This reference to Congress is——

A. I do not understand that to be a reference to Congress for its action. I do not think a department has a right to do that. They have no right to send me to Congress as a petitioner for Congressional relief without my knowledge and consent. In other words, the Department undertook to ask Congress to pay me for services where they had not allowed any themselves.

Q. You have since had other correspondence with other departments, have you not?

A. Yes, sir.

Q. In which the Department claimed that it was part of the regular services of the attorney to be performed by him under the fee bill?

A. Yes, sir. Well, not under the fee bill; no, sir.

Q. I will just ask you if there is not a letter that you received from the Attorney-General in regard to that?

Mr. KNAPP. Your honor, I think that the other letters should also be put in.

The COURT. Put them all in.

Q. One is a copy of the authority of your employment?

35 A. That is a letter from the Attorney-General in which he claims that it can not be paid by the Department, because it is out of his control. There is also another letter from another department stating that they can not pay it, because the Department of Justice before that had allowed and entertained them and paid them in other cases.

Q. Did you not receive another letter, Mr. Bashaw, in which the Attorney-General claimed that your services in this case, if for the Government, were just the same as in other cases for the Government, under the fee bill?

A. I do not remember that.

Mr. KNAPP. You refer to the Bliss case.

Mr. JOHNSON. Your honor, I think I have some other papers, letters in which I think this question is gone over.

WITNESS. I may have received the letter, but I do not recollect it. I am very certain that the disposition of the Department with reference to this claim certainly is not consistent throughout. I may have received a letter of the kind you refer to, but I do not recollect it. My recollection is that the final position of the Department was that it was a matter that came within the jurisdiction and duties of the Comptroller of the Currency, that it was service rendered on his order; that the Attorney-General could not pay it; that certain appropriations were made for the Comptroller for expenses incurred by him, but that these services were clearly not of this character, and could not be paid out of this fund. The position of the Comptroller of the Currency was that my account ought to be sent to the Attorney-General; that the Department of Justice in other cases of that kind had paid those as he understood.

Q. You do not remember a letter in which it was claimed that
36 if you did these services that they came under the regular fee bill, or if they did not come under the regular fee bill that Mr. Stephens ought to pay you?

A. No, sir; I am satisfied I never received any such letter.

Q. Now you had a claim against Mr. Stephens, in which you had some correspondence with the Department about, didn't you?

A. But not with reference to this case.

Q. And you compromised with Mr. Stephens through the suggestion of the Department, didn't you, and made a receipt to Mr. Stephens?

A. I did, for services rendered by me to Mr. Stephens, but this was not in it. I did not render these services to Mr. Stephens. I had the same controversy with Mr. Stephens as my successor had with reference to the right to represent the receiver of the Fifth National Bank in all its litigation and business, and I did render some services for Mr. Stephens as the receiver of the Fifth National Bank, for which he paid me.

Q. You did claim $2,000.00 and compromised for $600.00?

A. I do not remember ever claiming that. I asked one of my assistants to see Mr. Stephens. I never made any claim against him. He saw me one day and said we had better fix the matter up, as he was willing to pay me up and asked me what I thought would be a reasonable sum. We talked the matter over and finally agreed on $600.00 for services rendered by me to him as receiver of the Fifth National Bank.

Mr. KNAPP. This was not included, was it?

A. No sir. I did confer with Mr. Stephens about this account and as to where it ought to be paid and so on, but did not claim against Mr. Stephens for this.

Mr. JOHNSON. I will say to your honor, that I supposed the judge had the original of this correspondence, and that I will hand in the
37 copies of them, if my memory is not at fault about what they are.

If there is not any, of course I will not have any to send.

Plaintiff introduced the following letters in evidence:

Copy of a letter from the Acting Solicitor of the Treasury to Thomas P. Bashaw, of date November 25th, 1887.

Letter from F. M. Cockrell to Thomas P. Bashaw, of date March 30, 1889.

Letter from the Attorney-General to F. M. Cockrell, of date March 29, 1889.

Letter from the Deputy Comptroller of the Currency to F. M. Cockrell, of date March 25th, 1889.

Letter from the Attorney-General to Thomas P. Bashaw of date October 21st, 1890.

The defendant introduced the following letters:

Letter from J. H. Maynard, Asst. Secretary of Treasury, to Thomas P. Bashaw, of date March 13, 1890.

Letter from J. H. Maynard, Asst. Secretary of Treasury, to Thomas P. Bashaw, of date March 18th, 1890.

Letter from W. Windom, Secretary of Treasury, to W. W. Dudley, of date May 22nd, 1890.

Letter from Lon V. Stephens, receiver Fifth National Bank, to the Comptroller of the Currency, of date March 20th, 1890, and receipt accompanying it.

38 Said Exhibit E above referred to is in words and figures following, to wit:

EXHIBIT E.

(H. H. 993, 1884. In correspondence on this subject quote the above initials and file numbers.)

DEPARTMENT OF JUSTICE
Washington, D. C., Dec. 20, 1889.

T. P. BASHAW, Esq.,
Late United States Attorney, St. Louis, Mo:

SIR: In reference to Department letter to you of May 18th, 1889, stating that employment by the Attorney-General was not the source of your services, but that your appearance and services in the case of William H. Bliss vs. The United States, in the eastern district of Missouri, were by virtue of the statute, it is proper to say to you that when a district attorney is directed by statute to perform a specific service he is paid, so far as the responsibility of this Department is concerned, out of the appropriation for fees of district attorneys under the fee bill, or for unofficial services under section 3, page 109, volume 18, Stats. at Large, or under section 299, R. S.

Section 299, R. S., authorizes an assimilating of compensation to the rates of the fee bill "for services rendered in cases instituted in the courts of the United States or of any State when the United States is interested, but is not a party of record," etc. As your services were rendered in a United States court in a case where the United States was a party

39 of record, section 299, R. S., does not apply.

Section 3, page 109, volume 18, Stats. at Large, authorizes the Department of Justice to pay district attorneys "for the performance of services

not covered by their salaries or fees." This section refers to unofficial services—those that are not directed by statute—and it authorizes the Department of Justice to pay for them. In the case under consideration you were directed by law (24 Stats. at Large, chapter 359, page 506, section 6) as follows: "* * * It shall be the duty of the district attorney * * * to appear and defend the interests of the Government in the suit, * * *." Section 3, page 109, of volume 18, above referred to, does not apply to your services, you not being employed by the Department of Justice, but being under official obligation to defend the interests of the Government; and whatever direction may have been given to you by this Department was subordinate to the general direction of the statute, your services being in the line of the discharge of the duties of a district attorney. You notice that the language above quoted lays an imperative duty upon the district attorney, without a specific direction as to what his fees are to be or how he is to be compensated, and inferentially permits him to charge only the customary statutory fees. It therefore appears that if you are to receive compensation through the agency of this Department under existing legislation, it is to be made under the fee bill.

Section 823, R. S., provides that, "The following and no other compensation shall be taxed and allowed to attorneys, * * * except in cases otherwise expressly provided by law." Your claim of $500.00 as compensation for your services in the case of Bliss vs. The United States does not fall within the cases otherwise expressly provided by law; and not falling within those cases the services, if payable from any appropriation, are payable in accordance with section 824, R. S., which provides that the fee shall be, "In cases of law, when judgment is rendered without a jury, ten dollars."

The above statement is made to you as the result of an examination of the question of your claim upon appropriations under the control, wholly or partially, of this Department, made with a desire to see how, within the terms of statute, any compensation other than the ten dollars last mentioned could be made to you, and I see no way of arriving at a conclusion other than that above stated, which conclusion is supported by the fact that other district attorneys, defending suits instituted by claimants against the United States for disallowances, similar to those embodied in the suit of Bliss vs. The United States, have charged ten dollars for such services, in the regular fee bill, and their accounts have been so adjusted by the accounting officers of the Treasury. This last item of information is communicated to the Department by officials in the First Auditor's and First Comptroller's offices.

A friend of yours, visiting the city, suggested to me that it was possible for me to pay you out of the appropriation made for defraying the expenses of defending suits in the Court of Claims. Reference to the act providing for that appropriation shows that it is made "For defraying the necessary expenses incurred in the examination of witnesses and procuring of evidence in the matter of claims against the United States, and in defending suits in the Court of Claims, * * * ;" and not for defending suits in courts other than the Court of Claims.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

41 Said Exhibit 1, above referred to, is in words and figures following, to wit:

EXHIBIT 1.

(Copy.)

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., Nov. 25th, 1887.

SIR: By request of the Acting Comptroller of the Currency, I have to instruct you to confer with Mr. Lon V. Stephens, receiver, and to take the proper action for the forfeiture of the charter of the Fifth National Bank of St. Louis.

Very respectfully,

F. A. REEVE,
Acting Solicitor.

THOMAS P. BASHAW, Esq.,
U. States Attorney, St. Louis, Mo.

ST. LOUIS, MO., *December 10th*, 1889.

I certify that the foregoing is a true copy of the original letter as the same remains on file in the office of the U. S. attorney for the eastern district of Missouri.

GEO. D. REYNOLDS,
U. S. Att'y, East. Dist. Mo.

Said Exhibit 2, above referred to, is in words and figures following, to wit:

EXHIBIT 2.

UNITED STATES SENATE,
Washington, D. C., March 30, 1889.

42 Hon. T. P. BASHAW,

MY DEAR JUDGE: On receipt of your favor of the 18th inst. I immediately applied to the Comptroller of the Currency, and herein send you his reply of the 25th inst. I thereupon applied to the Atty. Gen., and here send you his reply of the 29th inst. I saw Mr. Hodges, the clerk in the Atty. General's Office having charge of such matters, and he claimed, as the papers seem to show, that there was no appropriation out of which to pay such services, and therefore reported it to Congress for a deficiency appropriation, but too late for the deficiency appropriation bill of the last session, and there is no remedy but to wait till Congress shall appropriate in the next session. I regret this exceedingly, and only wish you had let me know about this early in Feb. that I could have had it provided for.

With best wishes, sincerely your friend,

F. M. COCKRELL.

Said Exhibit 3, above referred to, is in words and figures following, to wit:

EXHIBIT 3.

(H. H. In any further correspondence on this subject quote the above initials.—30, 1888.—L. M. B.)

DEPARTMENT OF JUSTICE,
Washington, March 29, 1889.

Hon. F. M. COCKRELL,
United States Senate.

43 SIR: In answer to your inquiry of the 26th instant, you are informed that the claim of T. P. Bashaw, U. S. attorney for the eastern district of Missouri, for compensation for services in procuring the forfeiture of the charter of the Fifth National Bank of St. Louis, Missouri, was forwarded at the close of the last session of Congress to be included, by action of the Senate, in the deficiency bill, but it is understood that the claim was forwarded too late for Congressional action.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

Said Exhibit 4, above referred to, is in words and figures following, to wit:

EXHIBIT 4.

(Address reply to "Comptroller of the Currency," Washington, D. C. R. F. D. C. J. S.)

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
Washington, D. C., March 25, 1889.

Hon. F. M. COCKRELL,
United States Senate.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th inst., stating that you understand there is some trouble between this office and that of the Attorney-General with respect to the payment of an attorney's fee of $1,000 to Hon. T. P. Bashaw for services in pro-
44 curing the forfeiture of the charter of the Fifth National Bank of St. Louis, and asking to be advised as to the status of the claim.

In reply you are respectfully informed that in October, 1888, the receiver of the Fifth National Bank of St. Louis informed this office that Judge Thos. P. Bashaw, United States district attorney, had notified him that he would ask for $2,000 for his services in the proceedings to forfeit the charter of the Fifth National Bank.

In reply to this letter the receiver was advised by the Comptroller October 29th, as follows: "Your only course is to refer the district attorney to the Department of Justice, as there is no statute under which funds of your trust can be used in payment for services rendered by him in the performance of his statutory duty.

"The United States district attorney for the southern district of Ohio in the Fidelity National Bank case presented his claim to the Department of Justice which took cognizance of the matter."

Since the above-named date no correspondence has been had with this office with respect to the matter.

Very respectfully,

J. D. ABRAHAMS,
Deputy and Acting Comptroller.

Said Exhibit 5, above referred to, is in words and figures following, to wit:

EXHIBIT 5.

DEPARTMENT OF JUSTICE,
Washington, D. C.

45 (H. H. 30–1888. In correspondence on this subject quote the above initials and file number.—L. N. W.)

October 21, 1890.

T. P. BASHAW, Esq.,
Late United States Attorney, St. Louis, Missouri:

SIR: Your letter of the 18th instant has been received about your account for services in procuring forfeiture of the charter of the Fifth National Bank of St. Louis, Missouri. No appropriation was made by Congress to pay for these services. The account was sent at first, among other accounts of various kinds, for legal services to Congress for its action. It declined to pass upon the propriety of paying the accounts, and returned them to the Attorney-General for his action upon each account, and reference of the same to the accounting officers of the Treasury. Under the circumstances the Attorney-General did not feel at liberty to approve any accounts that were not incurred under the authority of an Attorney-General.

The services of a district attorney in action to forfeit a charter of a national bank is under the control of the Comptroller of Currency and the Solicitor of the Treasury. An examination of the law and the facts bearing upon your claim shows that the Attorney-General is in no way responsible for the payment of your services; and, in fact, it is believed by the Department that similar services are properly payable at the time they are rendered out of the assets of the bank directly upon the order of the Comptroller of Currency.

Your account, therefore, with another of the same kind, is in the condition in which it was transmitted to this Department. Under
46 the view above mentioned, it is not seen how the Department can take further action.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

Said Exhibit 6, above referred to, is in words and figures following, to wit:

EXHIBIT 6.

(Copy.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 13, 1889.

T. P. BASHAW, Esq.,
United States Attorney, St. Louis, Missouri:

SIR: The Commissioner of Internal Revenue has referred to the Secretary your account for $825.00 for services, under section 838 R. S., in 165 internal revenue cases, which you decided the ends of public justice did not require to be prosecuted.

In accordance with the rulings of this Department and the opinion of the Attorney-General, this account can not be allowed, because the cases were not tried or disposed of before a judge.

Respectfully, yours,

[SEAL.] I. H. MAYNARD,
Assistant Secretary.

Said Exhibit 7, above referred to, is in words and figures following, to wit:

47 EXHIBIT 7.

(Copy.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 18, 1889.

T. P. BASHAW, Esq.,
United States Attorney, St. Louis, Missouri:

SIR: The Commissioner of Internal Revenue, under date of the 13th instant, referred to the Secretary your account for $235.00 for services under section 838 R. S., in deciding not to prosecute 47 internal revenue cases which had been reported to you by the Collector of Internal Revenue.

In accordance with the rulings of this Department, and the opinion of the Attorney-General, this account can not be allowed, because the cases were not tried or disposed of before a judge, and consequently no judge can give the certificate which the law requires, and which is necessary as the basis of the Secretary's allowance.

Respectfully, yours,

[SEAL.] I. H. MAYNARD,
Assistant Secretary.

Said Exhibit 8, above referred to, is in words and figures following, to-wit:

EXHIBIT 8.

(Copy.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., May 26, 1890.

48 WM. W. DUDLEY, Esq.,
Attorney and Counsellor at Law, Washington, D. C.:

SIR: Upon receiving your letter of the 12th instant relating to the account for $300.00, of Judge T. P. Bashaw, late United States attorney for the eastern district of Missouri, for services in what are known as the "Schmidt cases," for violation of the contract labor law, the account, with accompanying papers, was referred to the Solicitor of the Treasury for his opinion as to whether the Secretary is authorized to pay the account.

In his answer dated the 23rd instant, the Solicitor, referring to the alien contract-labor law, says:

"It is made the duty of the district attorney of the proper district to prosecute every suit at the expense of the United States, but this neither expressly nor by necessary implication authorizes the payment of extra compensation to either district attorneys, marshals, or clerks. It means that their lawful fees and costs, as now provided for, shall be paid by the United States.

"I am therefore of the opinion that the Secretary of the Treasury is not authorized by law to pay Mr. Bashaw's account."

Concurring in this opinion the account of Mr. Bashaw is disallowed.

Respectfully, yours,

[SEAL.] W. WINDOM,
Secretary.

49 Said Exhibit 9, above referred to, is in words and figures following, to wit:

EXHIBIT 9.

MARCH 20, 1890.

COMPTROLLER OF THE CURRENCY,
Washington City, D. C.:

DEAR SIR: Enclosed you will find an account against me as receiver of the Fifth Nat. Bank for $600, of Judge Thos. P. Bashaw, ex-U. S. district att'y for the eastern district of Missouri.

Also find his receipt for same.

The judge rendered me sundry services at times when our directors became frightened, and I think he is entitled to a fee. He thinks he should be paid very largely in excess of this amount, but after consulting with him, and the doubtful propriety of litigation over the matter, he is willing to receipt in full for all services rendered for $600. I trust you will allow the same, and reply at earliest opportunity.

Very resp'y,

[SEAL.] (Signed) LON V. STEPHENS,
Receiver.

Lon V. Stephens, receiver of the Fifth National Bank, St. Louis, to T. P. Bashaw, Dr.

To sundry services rendered said receiver by him while U. S. district attorney for the eastern district of Missouri..... ..... $600. 00

Received, Jefferson City, Mo., M'ch 20, 1890, of Lon V. Stephens, six hundred dollars in full of the above account, and of all demands against him as such receiver.

[SEAL.] (Signed) T. P. BASHAW,
Late U. S. Att'y, E. Dis. of Mo.

50 And afterwards, to wit, on the fifteenth day of June, A. D. 1891, the following among other proceedings were had and appear of record in said cause, to wit:

Judgment.

THOMAS P. BASHAW, PLAINTIFF,
vs. } 3503.
UNITED STATES, DEFENDANT.

Now come the parties by their attorneys, and this cause having been heretofore submitted to the court upon the pleadings and proofs, upon consideration whereof, and being fully advised in the premises, the court finds the issues for the plaintiff upon the second, third, and fifth counts of the petition, and doth assess his damages as follows: Upon the said second count at the sum of eight hundred and twenty-five dollars ($825.00); upon the third count at the sum of two hundred and thirty-five dollars ($235.00), and upon the fifth count of said petition, at the sum of ten dollars ($10.00), making a total of one thousand and seventy dollars ($1,070.00). And the court further finds the issues joined upon the first and fourth counts of the petition for the defendant.

It is therefore considered, determined, and adjudged by the court that the plaintiff Thomas P. Bashaw, have and recover of the United States the sum of one thousand and seventy dollars, the damages aforesaid by the court assessed, as well as his costs and charges herein expended, and that a copy of this judgment and of the within findings of the court, together with its opinion thereon, be certified to the Attorney-General of the United States pursuant to law.

51 It is further considered by the court that the plaintiff take nothing by his writ as to said first and fourth counts of the petition, and that as to said counts the defendant go hence without day.

52 In the circuit court of the United States for the eastern division of the eastern judicial district of Missouri.

THOMAS P. BASHAW
vs.
UNITED STATES.

THOMAS M. KNAPP, attorney for plaintiff.
GEORGE D. REYNOLDS, United States attorney for defendant.

FINDINGS.

1. Under the first count of the petition the court finds the facts to be substantially as therein stated, that is to say, the court finds that William

H. Bliss, late United States district attorney for this district at the time stated in the petition, sued the United States for fees earned as district attorney; that Thomas P. Bashaw, the plaintiff herein, who was United States district attorney for the eastern district of Missouri at the time said suit was brought, defended the same for and in behalf of the United States, and rendered the services in the petition stated; that the services so rendered were of the value stated in the petition, that is to say, of the value of five hundred ($500.00) dollars, and that the plaintiff has only been paid on account of said services the sum of ten dollars.

2. The court further finds the facts to be as stated in the second and third counts of the petition, that is to say, the court finds that between the 28th day of January, 1887, and first day of July, 1888, the collector of internal revenue for the first collection district of Missouri, re-
53 ported to the plaintiff herein (who was then United States district attorney for the eastern district of Missouri), divers and sundry cases of alleged violations of the internal-revenue laws of the United States, to the number of 165; that the plaintiff inquired into and examined each of said cases, and that upon such inquiry and examination decided that proceedings therein could not probably be sustained, and that the ends of justice did not require that such proceedings should be prosecuted, and that he thereupon made a report of the facts in such cases to the Commissioner of Internal Revenue for his direction. The court finds that the plaintiff's services were reasonably worth the sum of five dollars in each of said cases, to wit, total sum of eight hundred and twenty-five ($825.00) dollars.

That between the first day of July, 1888, and the 31st day of December, 1888, he made like examination and report in forty-seven other cases of alleged violations of the internal-revenue laws which were reported to him by said collector of internal revenue; that the plaintiff's services in each of the said forty-seven cases was likewise reasonably worth the sum of $5.00 per case, or the total sum of two hundred and thirty-five ($235.00) dollars.

3. The court also finds the facts to be substantially as stated in the fourth count of the petition herein, that is to say, the court finds that plaintiff as district attorney on the 31st day of August, 1888, brought twelve suits in the name of the United States against Harry A. Schmidt to recover penalties for the importation by him of twelve aliens into this country, when they were under contract to perform labor in the United States; that the
54 plaintiff during the time he was district attorney rendered services for and in behalf of the United States in said suits that were reasonably worth the sum of three hundred ($300.00) dollars; that said twelve suits were pending and undetermined in the United States circuit court at the time the plaintiff herein was removed from office as district attorney, and that said 12 suits were eventually compromised and dismissed by the Government without any judgment being rendered therein.

4. The court also finds the facts to be substantially as stated in the fifth count of plaintiff's petition; that is to say, the court finds that on the twenty-fifth day of November, 1887, the plaintiff herein, by direction of the Comptroller of the Currency, brought an action in the United States circuit court for the eastern district of Missouri to forfeit the charter of the Fifth National Bank of St. Louis, Missouri, and in the course of said pro-

ceedings obtained a decree of forfeiture on the 21st day of May, 1888; that the plaintiff's services in conducting said suit were reasonably worth the sum stated in said petition, to wit, the sum of one thousand ($1,000.00) dollars, and that he has received nothing on account of said services.

The court further finds that the plaintiff entered upon the discharge of his duties as United States district attorney for the eastern district of Missouri on the 28th day of January, 1887, and that his successor in office was duly appointed and qualified on the 28th day of May, 1889.

CONCLUSIONS OF LAW.

First. The plaintiff is not entitled to recover on the first count of the petition.

The fee which the United States district attorney is entitled to
55 recover for services such as were rendered in the case of Bliss vs. United States, mentioned in the first count of the petition, is determined by section 824, Revised Statutes of the United States, and it appears that the plaintiff has already received the compensation prescribed by that section, to wit, $10.00.

Second. Plaintiff is entitled to recover the sum of $825.00 under the second count of the petition, and the sum of $235.00 under the third count of the petition.

In so deciding the court adheres to the views expressed by Judge Treat, 23 Feb., Rep., page 26 to 29 inclusive, that under section 838, Revised Statutes of the United States, a district attorney may recover reasonable compensation for services rendered and expenses incurred in making an examination into alleged violations of the internal-revenue laws reported to him by the collector, although no proceedings are instituted in court.

Third. I conclude that plaintiff is not entitled to recover under the fourth count of the petition. I know of no provision of law that would authorize the court to render a judgment against the United States, on the state of facts alleged and proven, to sustain that count.

Fourth. I also conclude that plaintiff is not entitled to recover more than ten dollars under the fifth count of the petition. There seems to be no law of the United States giving compensation to a district attorney for such services as are described in that count, unless it be section 824. I conclude that he is entitled to a judgment in the sum of ten dollars, by virtue of section 824, on the fifth count.

A judgment as herein indicated on the second, third, and fifth counts will accordingly be entered.

56 And afterwards, to wit, on the second day of September, A. D. 1891, the following further proceedings were had and appear of record in said cause, to wit:

Assignment of errors filed.

THOMAS P. BASHAW, PLAINTIFF,
vs. } 3503.
THE UNITED STATES, DEFENDANT.

Now comes the defendant by attorney and files assignment of errors herein.

Said assignment of errors is in words and figures following, to wit:

Assignment of errors.

IN THE CIRCUIT COURT OF THE UNITED STATES
In and for the Eastern Division of the Eastern Judicial District of Missouri, ss:

THOMAS P. BASHAW
vs.
THE UNITED STATES. } No. 3503. Assignment of errors.

Now comes the United States, defendant in the above entitled cause, by Geo. D. Reynolds, its attorney in and for the eastern district of Missouri, and says that there was error committed by the honorable court in the above entitled cause, in this, to wit:

First. The court erred in overruling the objection of defendant's counsel to the hearing of any evidence on any of the counts in the petition of plaintiff, for the reason that in none of said counts was there any cause of action stated against the United States, nor any state of facts set out, that rendered the United States liable to the plaintiff.

Second. The court erred in receiving any testimony on the second
57 count or cause of action of plaintiff's petition for the reason that the facts stated in said second count did not entitle the plaintiff to any judgment.

Third. The court erred in holding that plaintiff was entitled to recover the sum of eight hundred and twenty-five dollars, or any other sum, under the second count of his petition.

Fourth. The court erred in hearing any testimony under the third count in the petition of plaintiff, for the reason that said third count showed on its face that plaintiff was not entitled to recover on the cause of action therein stated.

Fifth. The court erred in finding that plaintiff was entitled to recover the sum of two hundred and thirty-five dollars, or any other sum, under the third count of the petition.

Sixth. The court erred in rendering judgment in favor of plaintiff on the second and third counts of the petition.

Seventh. The court erred in rendering judgment for the sum of ten dollars, or any other sum, under the fifth count in the petition, and erred in finding that plaintiff was entitled to recover anything on said fifth count of the petition.

Eighth. The court erred in hearing any testimony as to the fifth count in the petition, or rendering any judgment thereon in favor of the plaintiff for any sum, for the reason that it did not appear that plaintiff had ever rendered any account to the United States for the ten dollars, found by the court to be due him, on account of the services set out in the fifth count of the petition.

Ninth. The court erred in finding the plaintiff was entitled to recover anything in the said suit, and the judgment and finding should have been for the defendant on all the counts in the petition.

GEO. D. REYNOLDS,
U. S. Attorney.

And afterwards, to wit, on the tenth day of September, A. D. 1891, the following further proceedings were had and appear of record in said cause, to wit:

58 *Appeal allowed—Citation signed.*

THOMAS P. BASHAW, PLAINTIFF,
vs.
UNITED STATES, DEFENDANT. } 3503.

Now comes the defendant, by district attorney, and prays an appeal from the judgment of this court herein to the Supreme Court of the United States, and presents to the court a citation citing and admonishing the said plaintiff to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after this date; which said appeal is allowed and said citation signed by the judge. And it is ordered by the court that the clerk make out and certify to said Supreme Court a full and complete transcript of the record and proceedings in this cause.

59 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, and proceedings, in case No. 3503, of Thomas P. Bashaw, plaintiff, against the United States, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in the eastern division of said district, this 15th day of September, in the year of our Lord eighteen hundred and ninety-one.

[SEAL.]

A. P. SELBY,
Clerk of said Court.

60 (Indorsed:) No. 3503. United States circuit court, eastern division of the eastern judicial district of Missouri. Thomas P. Brashaw against the United States. Duly certified transcript of the record in the above entitled cause.

61 (Indorsement on cover:) No. 1383. The United States, appellant, vs. Thomas P. Brashaw. E. Missouri, C. C. U. S. Filed September 22, 1891.